IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7043 OF 2006

NARAYAN S. PAGDHARE & ORS. ... PETITIONERS.

VS.

BAJAJ AUTO LTD. & ORS. ... RESPONDENTS.

MS. GAYATRI SINGH ADV. FOR THE PETITIONER.

MR. J.P.CAMA SR. ADVOCATE WITH MRS. SWATI DESHYPANDE I/B.M/S.BODHANWALLA & CO. FOR THE RESPONDENT NOS.1 TO 3.

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CORAM : A.P.DESHPANDE, J.

DATE : February 6, 2007.

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P.C.

1. This petition has been filed by three workmen, in a representative capacity for and on behalf of 747 employees. Undisputedly the employees were in the employment of the respondent and had put in quite numbers of years in service by the time the respondent - company announced and allowed the voluntary retirement

scheme (VRS). The VRS scheme was introduced in the year 2000, 2001, 2002 and 2003 and, thereafter in the year 2005. The present petitioners are mainly from the workmen who had opted for VRS in the year 2000 to 2002.

2. It is further not in dispute that on accepting the VRS by the petitioners, they have received all the benefits under the VR Scheme, when they have opted for VRS. Sometime in the year 2005, the respondents floated another VRS and on realising that the said scheme is more beneficial to the workmen, the present petitioners and other similarly situated employees, moved the Industrial Court, by filing a complaint (ULP No. 17 of 2005) by contending that the respondent-company had engaged in unfair labour practices under item 5, 9 and 10 of Schedule IV of the MRTU & PULP Act. A preliminary objection was raised about maintainability of the complaint by contending that as all the petitioners have taken the benefits under the VRS long back, and there does not exist any relationship of employer and employee and thus, the present petitioners do not satisfy the test of "workmen" under Section 2(s) of the Industrial Disputes Act.

3. Relying on various judgments of the Apex Court, which are referred to in the Order, the Industrial Court

has recorded a finding that the complaint, as filed is not maintainable in the absence of existence of relation ship of employer and employee between the parties.

4. The learned Counsel appearing for the Petitioner has contended that the Industrial Court ought not have rejected the complaint at the threshold but ought to have permitted the parties to lead elaborate evidence in support of their case and then only ought to have adjudicated the issue of maintainability alongwith other issues.

5. It is next contended that an assurance was given by the Rspondent-company in a document titled as an Appeal made to the workmen to seek voluntary retirement, dated 31st October, 2002. Placing reliance on the statement contained in Appeal, it is submitted that the Petitioners were swayed by the said Appeal and were misled to accept the same. The statement reads thus :-

> "In any case the post settlement Voluntarily Retirement Scheme, if any, will in no way provide a higher amount than the current Scheme".

. In the submission of the learned Counsel for the

Respondent, the assurance was only restricted to the next V.R.S. and cannot bind the Respondent for all time to come. It is pointed out that no additional benefit was extended in 2003,however, more amount is paid in the settlement of 2005.

6. The learned Counsel appearing for the Respondents supports the order impugned in this petition, by contending that all the petitioners have, without exception, received all the benefits under the VRS, when they accepted it and the same is in between the year 2000 to 2003. The terms of the VRS cannot be static and it was only in the year 2005, that some more favourable terms were provided to the workmen. It is emphatically pointed out that all the petitioners have received the benefits long back and ceased to have any relationship with the respondents as is envisaged by the provisions of Section 2(s) of the Industrial Disputes Act. Belatedly, filing a complaint in the year 2005 on the ground that the scheme introduced in 2005 provides for better terms of VRS, is not maintainable.

7. The learned Counsel appearing for the Petitioners has also submitted that even after termination of the relationship of employer employee, a complaint would be maintainable, as a person would

continue to satisfy the test of the definition of "workmen" under Section 2 (s) of the Industrial Disputes Act. However, in my opinion, the employees, who opted for VRS and received all the benefits thereunder, cannot claim that their relationship continues to subsist for years to come and they could have a locus to file a complaint, if in case, in future, some cause accrues on account of grant of better benefits under some other scheme. The relationship as is envisaged by Section 2(s) of the Industrial Disputes Act cannot be a relationship in perpetuity. If some dispute is referable to dismissal, discharge or retrenchment etc., the same could be brought before the Court but the same would require a time nexus. A person who voluntarily retired cannot turn around and challenge the same more so after having received all the benefits under the Voluntary Retirement Scheme, by claiming the existence of relationship as workmen with the employer.

8. I have perused the Order passed by the Industrial Court, which does not suffer from any illegality or impropriety and hence does not require interference in exercise of writ jurisdiction. Consequently the petition is summarily dismissed.

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[A.P.DESHPANDE, J.]